

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: **Tmt. K. Chithra, B.A., B.L., (Hons)**

Principal District Munsif, Nagercoil.

Thursday, on this the 26th day of March, 2026

E.A.No.153 of 2017

in

E.P. No. 78 of 2012

John Milton

....Petitioner/Addl.4th Respondent

-vs-

1. Raja (died)

2. Chandra (Died)

(Amended as per order passed in
memo dated 23.02.2026f)

3. Sahayam

4. Valarmathi

5. Sudha

6. Namasivayam

7. Manigandhi

8. L.Suresh

... Respondent /Addl. 2nd petitioner &
Addl. Respondents 1 to 3 & 5 to 9

Addl.R9. Rajesh

Addl.R10. Raskin

Addl.R11. Anthony Arul Rajathi

(As per the Order dated 01.12.2025 in

E.A.No.7 of 2025 the addl-Respondents

9 to 11 are impleaded as the legal

representatives of the first Respondent) ... Proposed Addl.Respondents 9 to 11

This Execution Application is came up before this court on 24.03.2026
for final hearing in the presence of Mr.R.Pravin, Advocate for the Petitioner
and Mr.Ashok Kumar, Advocate for the 5th and 6th Respondents, and

Mr.Kumarasamy, Advocate for the 7th Respondent and Mrs.J. Suseela Devi, Advocate for the 8th Respondent and Mr.G. Sivakumar, Advocate for the Addl.9 to 11 Respondents and 1st and 2nd Respondents died and 3rd and 4th Respondent exparte in Execution petition upon perusing the case records and having stood over till date for Consideration, this Court deliveres the following:

ORDER

1. This petition was filed under Section 47(1) and Section 151 of Code of Civil Procedure, by the petitioner/4th additional respondent, to dismiss the Execution petition in E.P. No.78/2012 of O.S. No.31 of 1982.

2. CRUX OF PETITION:

2.1) The petitioner herein was the 4th additional respondent in E.P. No.78/2012, which was barred by the law of limitation. The decree in O.S. No.319/1982 was passed on 13.10.1987. Against the decree and judgement in O.S. No.319/21982, an appeal was filed and it was disposed of on 16.03.1989. The execution petition No.32/1988 was filed by the original decree holder and it was dismissed for default on 19.08.2004 which was never chosen to be proceeded by restoring it to file as required by mandatory procedural law.

2.2) This Execution petition No.78/2012 was filed by one Raja, who purchased the suit property by virtue of sale deed No.1496/1993 dt. 14.07.1993 from the decree holder during the pendency of E.P. No.32/1988. The EP No.78/2012 was filed on 24.11.2012 after a period of 25 years 1 month and 11 days from the date of decree. Thus, this Execution Petition is barred by

limitation and it is not maintainable with respect to the identity of the petition schedule property.

2.3) The petitioner is stranger intruder, whose credibility and his document is not tested or subjected to test. The description of property in O.S. No.319/1982 decree is not identical to the property described in sale deed No.1496/1993. The said sale deed is fraudulent and non-operational, because the seller was not possessed with the property and no such transfer of property took place as said in the sale deed. The seller deliberately lie as if he had actual possession and enjoyment of the conveyed property. The contents of the sale deed No.1496/1993 is in contra with the relief sought by the petitioner in E.P. No.78/2012, which warrants summary dismissal.

2.4) There is no assignment of decree or made-over by the original decree holder. Thus, the E.P. No.78/2012 has gross and serious procedural flaw which can't be rectified. Hence, the main Execution petition is liable to dismiss and this petition was filed so.

3. CRUX OF COUNTER ALLEGATIONS:

3.1) The petition and affidavit are hit by resjudicata. The O.S. No.319/1982 was filed by the decree holder Lekshmanan to evict the petitioner and 2nd respondent and her husband- parents of petitioner from the petition schedule property, with mesne profits. The suit was decreed and the appeal in A.S. No.20/1988 was dismissed by the Subordinate Judge on 10.03.1989.

Before filing E.P. No.32/1988, the petitioner therein/judgment holder named Lekshmanan sold the claim schedule property to the 1st respondent/Raja under two documents in the year 1987 and then the remaining portion in the year 1993. The first respondent was the purchaser of the scheduled property from the judgment holder and he can file Execution petition. The petitioner has got no legal right to question the execution of sale deed and its validity. The 1st respondent died and his legal heirs were impleaded as respondents 9 to 11.

3.2) The scheduled property is a vacant plot with no electricity connection. Its wall is in dilapidated condition. During the pendency of E.P. 32/1988, one Chandra, mother of the petitioner, had filed O.S. No.508/1990 for the relief of permanent injunction with respect to the scheduled property. It was dismissed on 31.03.2000 and its appeal A.S. No.24/2000 was preferred. In A.S. No.24/2000, the E.P. No.32/1988 was stayed by the appellate court. The said A.S. No.24/2000 was dismissed on 28.02.2001 and its S.A. No.945/2001 was dismissed on 20.06.2011 by the Hon'ble High court. As per the doctrine of merger, the original decree in O.S.No.319/1982 merged with the final judgment in S.A. No.945/2001 dt. 20.06.2011. The 1st respondent along with the decree holder defended the second appeal before the High court. Thus, the present EP was not barred by limitation.

3.3) The petitioner was colluded with the 6th respondent and filed a suit in O.S.No.26/2013 for partition and it was dismissed on 02.08.2019 by the I

additional Sub Court, Nagercoil. The petitioner has filed series of litigation to obstruct the execution of decree and judgment. The dismissal of E.P. No.32/1988 was not due to the default of this respondent herein. The original decree holder Raja died. As per S.146 CPC, any person claiming under the original party can file EP. The petitioner has no right to question the 1st respondent's locus standi and the validity of sale deed executed by decree holder in favour of the 1st respondent. This petition is abuse of process of law. Thus, he prayed to dismiss this petition.

4. POINT TO BE DETERMINED:

Whether this petition is to be allowed or not?

5. Both side enquiry heard. Records perused carefully. Both parties filed written argument notes.

6. On the petitioner side, the petitioner was examined as PW1, Ex.P1 marked. On the respondents' side, no evidence let in.

7. REASON FOR DETERMINATION:

The Law of Limitation & The Doctrine of Merger

7.1) Under Article 136 of Limitation Act, a decree must generally be executed within 12 years. It is admitted by both parties that the original suit No.319/1982 was decreed on 13.10.1987 to evict the defendant Antony pitchai @ Mani. A.S. No.20/1988 against the decree in O.S.No.319/1982 was

dismissed on 10.03.1989.

7.2) Beyond these, during the pendency of first E.P. No.32/1988, the defendant's wife Chandra had filed O.S. No.508/1990 for permanent injunction, which was dismissed on 31.03.2000. The appeal suit No.24/2000 was preferred and the appellate court stayed the proceedings in E.P. No.32/1988, which was filed by original decree holder Lekshmanan. The said A.S. No.24/2000 was dismissed on 28.02.2001 against which she preferred Second Appeal No.945/2001 before the Hon'ble Madras High court. The S.A. No.945/2001 was dismissed on 20.06.2011 only. By suppressing all these material facts, the petitioner filed this petition on the ground of law of limitation.

7.3) When the Hon'ble appellate court in Appeal Suit No.24/2000 in O.S.No.508/1990 stayed the proceedings in E.P.No.32/1988 of O.S.No.319/1982, the **Doctrine of Merger** applies. This means the lower court's order is absorbed into the higher court's order. As the High Court gave its final decision in **2011**, the Execution Petition filed in **2012** is well within the legal timeframe.

7.4) Section 146 of the CPC:

This section provides that where any proceeding may be taken by or against any person, then the proceeding may be taken by or against any person **claiming under him**. Since Raja bought the property from the original decree holder (Lekshmanan), he has the legal authority to finish the execution process.

7.5) THE PURCHASED PROPERTY IS DIFFERENT FROM THE DECREED PROPERTY:

The decreed 'A' schedule property is plot with building bearing number-NMC No.9/11-35, 36, 37, 38 of 0.02.10 426 ares constrained in resurvey No.DSD.9/74 of Nagercoil village, Agasteeswaram taluk, Kanyakumari district. The decreed 'A' schedule property is East-facing 16 x 10ft building with coconut leaf thatched roof, bearing number- NMC No.9/37 constrained in resurvey No.DSD.9/74 of Nagercoil village, Agasteeswaram taluk, Kanyakumari district.

7.6) The petitioner has produced Ex.P1/Sale deed No. 1496/1993 dt. 14.07.1993 in name of 1st respondent executed by the original decree holder Lekshmanan. On careful reading of Ex.P1, the property of 2 cents of land appurtenant with building bearing NMC No.16/3-36 A.M.37, 38 and with a neem tree, with EB SC No.36A, constrained in Old survey No.1382/242, resurvey No.D-9-74 of Nagercoil village, Agasteeswaram taluk, Kanyakumari district. In the said deed, the executor explained that he had title over 5 cents; he sold 3 cents already to the purchaser; the remaining 2 cents conveyed in this Ex.P1 and the total 5 cents of property is in 'L' shape.

7.7) It is pertinent to note that the 1st respondent had purchased whole 5 cents of land in Resurvey No.D-9-74 of Nagercoil village, from the decree holder Lekshmanan. There is no inconsistency in the identification or

description of property.

7.8) Further, the petitioner in his evidence as PW1 admitted that he had no right, title over the decree scheduled property or any property in resurvey No.D-9-74. He deposed that he did not know the survey no, extent or any description of decree scheduled property or the 1st respondent's purchased property. Without knowing any details and without having any right over the property, the petitioner lacks locus standi to question the proof of Ex.P1, its validity or its execution.

7.9) The petitioner admitted the previous case in O.S.No.508/1990, which was filed by his mother against the original decree holder. He deposed that he didn't know any facts of the case, property and his mother only knew all the said details. Thus, he has no locus standi to file this petition to dismiss E.P. No.78/2012 on the ground of limitation, inconsistency in purchased property.

7.10) Upon the above discussion, this court finds no merit in allowing this petition.

8. In fine, it is dismissed with cost of Respondents 9 to 11.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 26th day of March, 2026.

(Sd/-K.Chithra)

Principal District Munsif
Nagercoil

1. Petitioner side witnesses:-

PW1 - John Milton

2. Petitioner side documents :

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| Ex.P1 | 14.07.1993 | Certified copy of Sale deed in the name of Raja |
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3. Respondent side witnesses and documents : Nil

(Sd/-K.Chithra)

Principal District Munsif
Nagercoil.

PDM Court, Nagercoil.
E.A.153 of 2017 in
E.P. No.78 of 2012 in
Draft/Fair Order
Date: 26.03.2026.